

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLAUDE E. DENT

Petitioner,

vs.

9:03-CV-208

**SUPERINTENDENT, Wende Correctional
Facility,**

Respondent.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

This *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was referred to the Hon. David R. Homer, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4. On July 12, 2004, Magistrate Judge Homer issued a Report-Recommendation and Order ("Report-Recommendation") recommending that the Petition be denied. On July 23, 2004, Petitioner filed a Notice of Appeal indicating that he was appealing the matter to the United States Court of Appeals for the Second Circuit. See dkt. # 43. Apparently failing to recognizing that Petitioner lacked the right to take a direct appeal to the Second Circuit from the Magistrate Judge's recommendation, the District Court Clerk's Office shipped the record in this matter, including the record of the underlying state

court proceeding ("state court record"), to the Clerk's Office for the United States Court of Appeals for the Second Circuit. This Court treated Petitioner's Notice of Appeal as a request to file an interlocutory appeal, and, on October 7, 2004, issued an Order denying that request. See dkt. # 46.

On October 26, 2004, Petitioner filed objections to the Report-Recommendation. Dkt. # 47. However, because of the nature of the objections, review of the Report-Recommendation could not take place until the Court reviewed the state record. See 28 U.S.C. § 636(b) (1). By the time the Court received the state court record, Petitioner had filed a motion to amend his Petition for the third time. See dkt. # 51, see also dkt. # 1 (Petition); dkt. # 8 (Amended Petition); dkt. # 16 (Second Amended Petition). In an effort to conserve judicial resources and in keeping with the practices in this District, the motion to amended the Petition was referred to Magistrate Judge Homer for his review.

On December 8, 2005, Magistrate Judge Homer denied Petitioner's motion to amend the Petition. See dkt. # 57. The time to appeal this decision by Magistrate Judge Homer to this Court has expired. Accordingly, the matter is now before the Court on the record as it existed at the time Petitioner filed his objections.

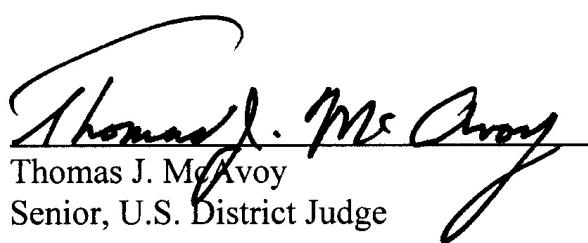
Having review the record *de novo* and having considered the issues raised in Petitioner's objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Homer

for the reasons stated in the July 12, 2004 Report-Recommendation. Therefore, it is hereby

ORDERED that the Petition seeking a writ of habeas corpus, as amended, is **DENIED**, and the Petition is **DISMISSED**.

IT IS SO ORDERED.

Dated: February 1, 2006



Thomas J. McAvoy
Senior, U.S. District Judge